

REMARKS

Claims 8-14 are in the case and presented for consideration.

Claims 1-7 have been canceled without prejudice to Applicant's rights to pursue the canceled subject matter in a continuing application.

In light of cancellation of claim 2, the rejection of claim 2 under 35 U.S.C. § 112, second paragraph, is believed to be moot.

Summarizing, the full text of the 2nd Official Action issued by the Examiner against process 10/686,289, resumes mentioning the reply to the first previous Action of October 08, 2006, having elected Group I without contestation, inexistent the election between Species I or II. Consequently, the "species requirement restriction and election", were withdrawn. Thus, the Action is issued on the merits of claims 1-7:

a) claim 2 is rejected according to Title 35 Section 112 2nd. paragraph of the American Civil Code for being "undefined".

b) claim 2 is rejected because the expression "meat" does not have a previous foundation considering that the "article" is mentioned only by the term "product".

c) claims 1, 4-7 are rejected according to title 35, Section 102 (b) of the American Civil Code, due to priority of Patent DE19646813 by Hnatek;

d) citation to Title 35, Section 103 (a) of the American Civil Code is presented as comprising the basis for all rejections of what is obvious, indicated in this official action;

e) claim 2 is rejected according to Title 35, Section 103 (a) of the American Civil Code, as Hnatek admits the same previous form of technique;

f) the Examiner requires that if the Applicant (José Barbosa) intends to decide for the continuation of present request, the applicant will have to present all the references he is aware of in this respect.

g) it indicates that the state of the art was well established in the formation of engraved markings on a foodstuff using a computer-controlled laser, which complies with the description mentioned in the claim;

h) it points out that Hnatek describes the laser and heat engraving of marks in foodstuffs;

i) there is the recognition that claim 2 differs from Hnatek in the "conventional stages";

j) emphasis is established in the sense that “the modification of Hnatek and the addition of the conventional processing stages of foodstuff for its recognized technique and the intended function of the applicant should be obvious in relation to the technique taken as a whole”.

k) claim 3 is rejected by Title 35, Section 103 (a) of American Civil Code for not being patentable due to Hnatek and Drouillard priorities (patents 5,897,797 and 5,660,747).

l) there is the indication that Hnatek describes lasers to mark foodstuff and Drouillard describes the equivalence of the employment of lasers or heated printing heads to mark the foodstuff.

m) claims 1 and 3-7 are rejected according to Title 35, section 102 (b) of the American Code as being anticipated by Drouillard, describing foodstuff with markings using a heat generator system (laser or heated printing head) and a computer.

n) it is observed that the claims are full of a language that does not positively recite anything, type “maybe”, “such as”, “could be”, aiming at a mere “option”;

o) finally, a list of patents is demonstrated showing the technique is full of examples of marking methods of a great variety of food products with a laser or heated printing heads.

REASONS FOR THE FULFILLMENT OF THE OFFICIAL ACTION

In relation to the revelation of the initial patent, the inventive activity of patent 10/686,289 is centered in a method, according to claims 1 and 7, with different features of novelty and industrial application, because while it foresees obtaining the method of a marked or engraved meat, the marking or engraving process of which may occur in low relief, and the meat product of which is prepared in any size or origin and afterwards receives the engraving or marking process, in low relief, and is packed in a special package, allowing the maintenance of its qualities for up to 36 months.

Both patents by Drouillard et al, restrict themselves to the marking process, not including the "engraving" system, on a superficial form, on the skin of fruits and vegetables, having as major feature the "ink-free" technique. The application of process engraving occurs by traditional laser means.

The Patent of the Applicant, 10/686,289 foresees the engraving or marking, not limited to one process or the other, which will be identified after the preparation of the meat and its final features, the process of which is realized by means of laser or calorie-producing equipment. The equipment realizing the process is identified after the final state of the meat, which is treated by means of cooking, grilling or baking up to the point, which will allow receiving the respective process.

The objective of the Applicant's Patent does not allow the application of engraving or marking system in fruits or vegetables, because their natural features would disintegrate them and make them inadequate for consumption.

Therefore, the novelty foreseen by patent 10/686,289 cannot be applied as a industrial activity for any fruit or vegetable, with the inexistence of any comparison or reproduction capacity of the quantum "revealed" in the patent of Drouillard et al.

The description itself of the drawings incorporated to the patents of Drouillard eliminates any obviousness of patent 10/686,289, comprising completely different equipment, parts, pieces and final products, with the former incapable of being explored to obtain the same purpose of the Applicant's patent.

The Applicant clarifies he does not request or foresees any special protection for the "laser" or even for any "calorie system", because both systems are of public domain.

The method of meat production with the application of the engraving or marking system including the low relief, and special packaging, are features not foreseen in the patents exhibited in this Official Action.

According to the legal forecast, the limits of the patent rights are foreseen in the American Civil Code and summarizingly reflect the technical extent of exclusivity, the limit of the "technical scope", according to title 35, Section 112.

In relation to Hnatek's patent, on the other hand, the solution of the technical problem described in patent DE19646813 A1, describes the laser engraving and the generation of motives of described figures and texts, presupposing a carbon-dioxide industrial laser, a laser engraving head with protection-class limitation, field distance, resolution, maximum speed, software, an AT computer, operation and maintenance instruction manual, feed cabinet for network environment.

The industrial activity of Hnatek's patent, according to claims, describes the procedure of generating images and written texts, in pasty foodstuffs, such as meat, pasta, sweets or other products from the general foodstuff industry, through a computer-controlled CO2 laser engraving system, equipped with a Scan Vector sensor system.

This patent by Hnatek also limits itself to the engraving system, not including the marking system and neither the application in low relief. Furthermore, this patent does not dimension with precision the application form of its engraving, indicating only the use by means of some types of equipment and laser.

Considering that the "novelty", eliminating any obviousness from patent 10/686,289 is centered in the method of preparing the meat, with the engraving or the marking after the product is ready, in low relief, and the additional application of a special packaging containing the possibility of inserting supplements such as seasoning, sauces and others and also maintaining the original features for longer periods, it does not contain any of the priorities now identified, the respective technical forecasts.

When the "meat", after preparation, shows a crust/ thick skin with a thickness of approximately 10 mm, the marking or engraving process applied, by the inventive activity proposed in patent 10/686,289, should be identified according to the resulting product. An engraving process cannot be applied, for example, to fish meat body, which is very sensitive, but it can be applied to bovine meat.

The thickness of the cover obtained after cooking, grilling or baking is necessary in order to allow the realization of the low-relief engraving.

The process of "*marking*" consists of a simple "*act of exhibiting*" a feature of superficial form on the *meat body*, that is, on the "*external*" face reaching the cover and a small meat depth, aiming at only "signaling, indicating, determining" its necessary features.

The "engraving" process, on the other hand, consists of "opening, sculpting" a space on the meat body in order to register the information to be exhibited, and it can occur on the "cover" that is, "the external meat face" and especially reach ample depth of the meat body, ready to cumulate with the "low relief" system, which is capable of signaling meat bodies with consistent, firm and non-dense covers.

The meat production method, therefore, along with the engraving or marking process, may occur in low relief, depending on the type of meat and its features after the preparation method, comprising the application through a special head especially for this type of meat – final product, with the PLC containing special transmission and reception sensors and signals (programmable central electronic system), apart from cumulating the laser system and the equipment containing special calorie-system, because the one applied will be identified from the resulting meat product.

Regarding the remaining patents in the list from the Examiner, none of them contains a series of features and technical definitions not proposed and not reached by patent 10/686,289, comprising among other features, live animal marking systems, the use of products such as hot irons, inks and similar products, cheese marking systems, manual marking systems, labeling systems, binary systems, bar codes, food decoration systems, among others, however, none of them cumulating with technical proposal idealized and exhibited in the Applicant's patent.

Furthermore, there are patents foreseen as priorities and comprising the state of the technique (state of the art), the processing form of which are no longer used, for being obsolete or for being industrially unfeasible. Therefore, without the risk of obviousness for the patent now intended.

The Applicant has other patents in the same line of research, with distinct novelty features and industrial application having already obtained a Patent Letter in France for his process 403582.

The Applicant clarifies that he does not intend the exclusivity over the laser process or the calorie equipment, traditional in the market, as he only requests special protection for the set of technical aspects comprising the differential features of his novelty, in the aspiration of the technical solution included in patent 10/686,289 in the legal presuppositions of the American Code to obtain a patent, namely:

.novelty;

.inventive activity;

.industrial application.

None of the mentioned priorities foresee any technical set applied in patent 10/686,289, and cannot, therefore, reach the same results originated in the preparation method of the meat, comprising the identification of the process, that is, the marking or engraving, and also comprising the capability of identification and application or not of the low relief system.

In this order the Applicant's patent comprises all the presuppositions that allow the concession of the of his patent letter, even considering all the patents pointed out as related to the matter, and considering that the entire technical aspects of each one does not foresee any coincidence with the state of the art exhibited in patent 10/686,289.

Also as guidance from article 27 of the Trips, we have:

Section 5: Patents

Article 27

Patentable Matter

1. *Without prejudice of the provisions foreseen in paragraphs 2 and 3 below, any invention of product or process, in all technological sectors will be patentable, providing it is new, involves an inventive step and is passive of industrial application. Without prejudice of the provisions in paragraph 4 of Article 65, in paragraph 8 of Article 70 and in paragraph 3 of this Article, **the patents will be available and patent rights will be usufructuary without any discrimination in relation to the location of invention, to the technological sector and in relation to the fact of the products being imported or produced locally.***

(our highlight)

Consequently, while the concept of Patent, since the most remote time, aims at generating the exclusivity of use, exploitation and titularity of the "art developed in the industrial field, providing the above requirements are fulfilled", comprising a certain "timely monopoly", **it should be pointed out that there is a "limit" to such protection, where an appreciation impossibility and the conception of new technologies in the same segment of a previously developed art should not exist, otherwise we would be placing ourselves in a situation of stagnation in terms of technological**

development, which would result in serious shocks among the great Nations and their respective development sectors of new technologies, making such a situation totally unfeasible and socially unacceptable.

In this order, we have the traditional doctrines comprised in the matter, such as:

“In Venice, in the XV Century. “Since the creation of the first national patent system, in the XV Century, the idea of Intellectual Property is connected with the mechanical arts: a new machine, a more efficient tool, an improved lever are the easiest examples of a patentable invention. A new chemical compound is a more magical creation: its utility is probably understandable, but not so its structure; even so, also there the patent was an early acquisition. Industrial processes, on the other hand, are invisible elaborations; they are not things to touch and see, even though apparent through the disposition of apparent on a plant, or by means of a written procedure instructing how to combine some chemicals. The patent system was never worried about visibility or comprehensibility: processes, like products were almost instantly recognized as a proper patent object. The patent only wants reproducibility, and only needs to know how the invention can be put into practice. Patents were never intended to be scientific tools: they were created to substitute the older trade secret as a means to protect an economic value, particularly important face to the competitors. The Jacobean Statute of Monopolies of 1623, understandably in a time where a lack of alternate technologies granted extraordinary economic advantages to whomever knew how to do anything a new way, both considered the patent a monopolistic instrument and absolved it from such a sin for the novel industries it encouraged. (SELA, 1897)¹

¹ Barbosa, Denis Borges, An Introduction to Intellectual Property, 2nd. Edition, Lúmen Júris, São Paulo, Brazil.

Summarizing, there should be the interpretation that different international legislations in the field of Intellectual Property have translated the “patent concept” into “a right that directly affects its creator/ inventor due to the technical features of the art developed by him and revealed aiming at obtaining a **technical solution**, initially developed with purely subjective aspects due to a human action in relation to research, conceptions, preparations, tests, finally and objectively obtaining an invention comprising the legal presuppositions of novelty, inventivity and industrial application”.

The “inventive act” is the essential element of every patent, either for utility model or for invention patent and therefore with patent 10/686,299 cumulating the combination of a method with process and final product, it cannot be rejected in the face of isolated parameters.

The mentioned Drouillard patents, in evidence do not foresee the inventive act and neither do they fulfill the technical features proposed by patent 10/686,289.

Hnatek's patent, on the other hand, cannot make the laser application unfeasible, since it did not originally idealize it, considering the fact that this technology is sophisticatedly applied by a great different number of industries and companies and in several segments, and it does not include in its state of the art the PLC unit cumulating engraving or marking operations and also the low relief option, as revealed by patent 10/686,289.

None of the patents pointed out as priorities foresee any type of special packaging.

CONCLUSION

As largely exhibited and sustained, all the theses of the h. requirement have been duly fulfilled and automatically contested and eliminated, as well as each claim was comparatively analyzed among patented objects among the priorities pointed out with the quantum revealed in patent 10/686,289 and are, therefore, **totally eliminated** because they do not comprise the stages/phases of the latter, including the device that realizes its process with consequent diverse purposes.

In this order, considering that patent 10/686,289 foresees the protection for a marking or engraving “**process**”, it comprises obligatory **phases and stages to be**

strictly followed, for which there are no similarities, because the “functions” and the “purposes” that automatically fall within obligatory presuppositions for the protection of a patent in American State, that is, **novelty and inventive activity and industrial application are completely different in the mentioned priorities, particularly the Drouillard and Hnatek patents, which do not comprise the same state of the art and technical solutions proposed by the Applicant's patent.**

In this order, the continuity of the patent process 10/686,289 is requested in order to obtain the corresponding Patent Letter, considering the fulfillment of the requirements of the respected North-American Civil Code.

Applicant has endeavored to make the foregoing response sufficiently complete to permit prompt, favorable action on the subject patent application. In the event that the Examiner believes, after consideration of this response, that the prosecution of the subject patent application would be expedited by an interview with an authorized representative of the Applicant; the Examiner is invited to contact the undersigned at (845) 359-7700.

Applicant respectfully submits that by this Amendment, the application has been placed in condition for allowance and such action is respectfully requested.

Respectfully submitted,

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